SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

No. 71-737

STATE OF MICHIGAN,
Petitioner,

vs.

EDWARD ALLEN TRUDEAU,
Respondent.

PETITIONER'S ANSWER TO RESPONDENT'S MOTION TO DISMISS PETITION FOR CERTIORARI

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Oakland County
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Chief Appellate Counsel

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Now comes Thomas G. Plunkett, Prosecuting Attorney in and for the County of Oakland, by Dennis Donohue, Chief Appellate Counsel, respectfully submitting this Answer to Respondent's Motion to Dismiss Petition for Certiorari and says as follows:

1. Petitioner admits the allegations in paragraphs 1, 2, 3 and 4 of Respondent's Motion to Dismiss Petition for Certiorari.

2. Petitioner denies the allegations in paragraph 5 of Respondent's Motion to Dismiss Petition for Certiorari and affirmatively replies that even a cursory reading of the opinion of the Michigan Supreme Court (set forth in the Appendix to Petitioner's Petition for Writ of Certiorari) will show that the Supreme Court of the State of Michigan, although citing at least one Michigan decision, clearly based their decision on federal decisions interpreting the United States Constitution.

Wherefore, Thomas G. Plunkett, Prosecuting Attorney in and for the County of Oakland, representing Petitioner, the State of Michigan, respectfully request this Honorable Court to deny Respondent's Motion to Dismiss Petition for Certiorari.

Respectfully submitted,

THOMAS G. PLUNKETT
Prosecuting Attorney

By: DENNIS DONOHUE
Chief Appellate Counsel

STATEMENT OF THE CASE

ARGUMENT

Although in its opinion, the Supreme Court of the State of Michigan cited the case of *People v. Carr*, 370 Mich 251, 121 NW 2d 449 (1963), the decisional language of the Michigan Supreme Court in the case of *People v. Tradegu*, 385 Mich 276; 187 NW 2d 190 (1971), was couched in the following language:

> "The United States Supreme Court has declared that an imprisoned felon does not lose his constitutional right against self-incrimination as to an entirely separate offense. Mathis v. United States, 381 US 1, 88 S Ct 1503, 20 L ed 2d 381 (1968). The right against unreasonable search and seizure is of equal stature with the privilege against self-incrimination.
>
> Defendant did not lose his civil rights or liberties while he was in police custody awaiting trial on another charge. This holding is not to be construed as in any way effecting essential steps which must be taken by the police in processing a prisoner as outlined in United States v. Wade, 388 US 218, 87 S Ct 1926, 18 L ed 2d 1149 (1967), and to assure the protection of the police and other prisoners."

In deciding questions of search and seizure it is obvious that federal standards apply. *Kerr v. California*, 374 US 23, 83 S Ct 1623, 10 L ed 2d 726 (1963).

Petitioner is aware that this rather elementary rule of constitutional construction has been interpreted to mean that federal constitutional standards in the area of search and seizure are a floor and not a ceiling and that the in-

dividual states are free to accept higher standards under their own state constitutions should they desire to do so.

However, it is Petitioner's contention that in the case at bar it is clear from a reading of the opinion of the Supreme Court of the State of Michigan that the State of Michigan grounded its decision on what it perceived to be a federally mandated floor and did not dispose of Mr. Trudeau's appeal pursuant to any attempt to construct a state ceiling of search and seizure standards that go beyond this required by the United States Constitution.

Wherefore, Petitioner prays that Respondent's Motion to Dismiss Petition for Certiorari be denied.

Respectfully submitted,

THOMAS G. PLUNKETT
Prosecuting Attorney
Oakland County

By: DENNIS DONOHUE
Chief Appellate Counsel

January 26, 1972